

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

B-215585

**FILE:****DATE:** December 26, 1984

Arrow Engineering, Inc.

**MATTER OF:****DIGEST:**

Although a solicitation clause that intended to require the bidder to furnish standard products that had been satisfactorily in use as a system for 2 years from a manufacturer regularly engaged in the manufacture of such products was ambiguous, the agency properly rejected the bid from a company which did not meet the intent of the clause. The bidder, because of the patent ambiguity of the solicitation provision, should have inquired as to its intended meaning prior to bid opening.

Arrow Engineering, Inc. protests the rejection of its bid by the Department of the Army under invitation for bids (IFB) No. DACA87-84-B-0080 for four custody transfer metering and prover systems for transporting oil through pipelines. We deny the protest.

The IFB contained the following provision:

"2. STANDARD PRODUCTS. Material and equipment shall be the standard products of a manufacturer regularly engaged in the manufacture of the products. Items of equipment shall essentially duplicate (for crude oil service and within 20 percent of the capacity and design pressure shown in the technical specifications) equipment that has been in satisfactory use at least 2 years prior to issue of this solicitation. However, components of each unit of a single item furnished under this contract shall be identical."

Of the seven bids received by the Army, Arrow's bid was low. However, the Army initiated a pre-award survey of Arrow that concluded that while Arrow was otherwise

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capable of performing the contract, it did not meet the requirements of the standard products clause for "equipment" that had been in satisfactory use for at least 2 years. Specifically, the Army viewed this provision as an experience requirement that offerors had to meet to be eligible for contract award. The Army required, as a condition of eligibility, that offerors have installed a custody transfer metering and proving system that has been operating for at least 2 years within the stated technical specifications; the Army did not consider the clause as referring to individual equipment or components of the system. Since Arrow had not installed a custody transfer metering and proving system that had been operating for 2 years within the stated specifications, the Army rejected Arrow's bid because it did not have the requisite experience. In support of its position, the Army points out that the parenthetical, "within 20 percent of the capacity and design pressure shown in the technical specifications," refers to other technical specifications in the solicitation which solely concern system parameter functioning and are not broken down to apply to individual pieces of equipment.

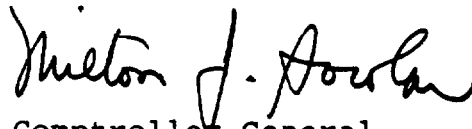
Arrow argues that the Army improperly rejected its bid because the cited provision only required offerors to have all equipment meet the specification requirements and did not refer to an integrated system. Specifically, Arrow argues: 1) that the rejection was erroneously based on the concept of responsiveness (the contracting officer, in the agency report filed with this Office, does refer to responsiveness); 2) that the clause itself literally refers to equipment rather than systems; 3) that the contracting officer never made a formal nonresponsibility determination (the rejection letter merely stated that the protester "failed to meet the experience requirement" of the standard products clause); 4) that the agency report which styles the provision as a valid special standard of responsibility is a "hypothetical" concoction by the Army's legal staff; and 5) that Arrow is otherwise capable of performing the contract as the pre-award survey team concluded.

We think that, at best, the solicitation's standard products clause is confusing. The clause literally refers only to products, equipment and components; yet the Army intended the clause to apply to the integrated systems being procured as line items rather than the equipment and components of that system. We also note that the

parenthetical specifications of the clause only refer to system parameters and is not broken down to the individual equipment level.

Nevertheless, the agency has made it clear that it did not intend and does not intend to accept a bid from a firm which had not installed a custody transfer metering and proving system that had been operating for 2 years within stated specifications. Arrow has not installed such a system. Regardless of the clause verbiage, therefore, and even if we require the Army to clarify the language of the clause to explicitly state its intent, it is obvious that Arrow would not qualify for award. In this regard, while from the record of the pre-award survey it appears that Arrow is an experienced producer of custody transfer metering and prover system, it has not previously produced a large system "within 20 percent of the capacity and design pressure" of the solicitation's specifications. We therefore believe that termination of the existing contract and resolicitation would be a useless act. Moreover, we think Arrow is in part responsible for the situation in which it finds itself--the terms of the standard products clause in question were so ambiguous that Arrow should have made inquiry from the agency prior to submitting its bid as to whether it qualified as an eligible offeror under its terms. See e.g., Avantek, Inc., 55 Comp. Gen. 735 (1976), 76-1 CPD ¶ 75.

The protest is denied.

*for*   
Comptroller General  
of the United States